

**SYNOPSIS<sup>1</sup>**

**CHARITABLE BINGO LICENSE AND CHARITABLE RAFFLE LICENSE — MONEY PENALTY — BURDEN OF PROOF** — In a hearing before the West Virginia Office of Tax Appeals on the assessment of a money penalty for the late filing of financial reports summarizing a Licensee’s charitable bingo operations or charitable raffle operations, the burden of proof is upon the Licensee to show that it timely filed such reports so as to not be subject to such penalty or to show that the State Tax Commissioner was without authority to assess such penalty. *See* W. Va. Code §§ 47-20-24 [1996]; 47-20-31(a)(6) & (b)(4) [1999]; 47-21-22 [1996]; and 47-21-30(a)(6) & (b)(4) [1999].

**CHARITABLE BINGO LICENSE AND CHARITABLE RAFFLE LICENSE — SUSPENSION OF LICENSE — BURDEN OF PROOF** — In a hearing before the West Virginia Office of Tax Appeals on the suspension of a charitable bingo license or a charitable raffle license, the burden of proof is upon the Licensee to show that it did not commit the offense that resulted in the issuance of an order suspending the licenses by the State Tax Commissioner or that the State Tax Commissioner was without any authority to issue such order. *See* W. Va. Code §§ 47-20-23(d) & (g) [1981]; 47-20-24 [1996]; 47-20-31(a)(2) & (b)(4) [1999]; 47-21-21(d) & (g) [1984]; 47-21-22 [1996]; and 47-21-30(a)(2) & (b)(4) [1999].

**FINAL DECISION  
AFFIRMING ORDER OF STATE TAX COMMISSIONER  
SUSPENDING CHARITABLE BINGO LICENSE AND  
CHARITABLE RAFFLE LICENSE**

Pursuant to the provisions of W. Va. Code §§ 47-20-23(d) [1981], 47-20-24 [1996], 47-20-31(a)(2) [1981], 47-21-21(d) [1984], 47-21-22 [1996], and 47-21-30(a)(2) [1999], on May 30, 2006, the Director of the so-called “Criminal Investigation Division” of the State Tax Commissioner’s Office, issued an order suspending the charitable bingo license and the charitable raffle license for a period of two weeks and ordered the licensee to pay a money

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<sup>1</sup> Hearings and decisions issued by the Office of Tax Appeals respecting the revocation or suspension of charitable bingo licenses or charitable raffle licenses are governed by the provisions of W. Va. Code § 29A-5-1, *et seq.*, not W. Va. Code § 11-10A-1, *et seq.* As such, there is no requirement that this Office issue the decision with synopsis points. However, synopsis points are voluntarily provided for the information and convenience of licensees, the State Tax Commissioner and other interested persons. Similarly, we voluntarily redact the identifying information and other “sensitive” information about the Licensee(s) in such cases.

penalty in the amount of \$ for failure to file certain quarterly and annual reports. The order was personally served on the Licensee.

The order notified the Licensee that it had twenty (20) days in which to appeal the Commissioner's order. By letter dated June 14, 2006, and received in this Office on June 15, 2006, the Licensee appealed the order of the State Tax Commissioner. This Office gave notice to the Licensee that a hearing would be held on August 17, 2006, at 10:30 a.m., and that the Licensee would be required to present all relevant evidence at the hearing.

### **FINDINGS OF FACT**

1. The Licensee commenced charitable bingo operations in September, 2005.
2. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing July 1, 2005, and ending September 30, 2005, was due on October 20, 2006. *See* W. Va. Code § 47-20-24.
3. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing July 1, 2005 and ending September 30, 2005 was filed on June 8, 2006. *See* State's Exhibit No. 2.
4. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing July 1, 2005 and ending September 30, 2005 was filed 7 months and 19 days after the due date thereof.
5. Consistent with W. Va. Code § 47-20-24, the State Tax Commissioner assessed a money penalty for the failure to timely file this quarterly financial report in the amount of \$ per month or fraction thereof, totaling the maximum amount of \$.

6. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing October 1, 2005, and ending December 31, 2005, was due on January 20, 2006. *See* W. Va. Code § 47-20-24.

7. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing October 1, 2005 and ending December 31, 2005 was filed on June 8, 2006. *See* State's Exhibit No. 3.

8. The quarterly financial report summarizing the Licensee's charitable bingo operations for the quarter commencing October 1, 2005 and ending December 31, 2005 was filed 4 months and 19 days after the due date thereof.

9. Consistent with W. Va. Code § 47-20-24, the State Tax Commissioner assessed a money penalty for the failure to timely file this quarterly financial report in the amount of \$ per month or fraction thereof, totaling the maximum amount of \$.

10. The annual financial report summarizing the Licensee's charitable bingo operations for the year 2005 was due on January 30, 2006. *See* W. Va. Code § 47-20-24.

11. The annual financial report summarizing the Licensee's charitable bingo operations for the year 2005 was filed on June 8, 2006. *See* State's Exhibit No. 4.

12. The annual financial report summarizing the Licensee's charitable bingo operations for the year 2005 was filed 4 months and 9 days after the due date thereof.

13. Consistent with W. Va. Code § 47-20-24, the State Tax Commissioner assessed a money penalty for the failure to timely file the annual financial report in the amount of \$ per month or fraction thereof, totaling the maximum amount of \$.

14. The Licensee commenced charitable raffle operations in September, 2005.

15. The annual financial report summarizing the Licensee's charitable raffle operations for the year 2005 was due on October 20, 2006. *See* W. Va. Code § 47-21-22.

16. The annual financial report summarizing the Licensee's charitable raffle operations for the year 2005 was filed on May 30, 2006. *See* State's Exhibit No. 5.

17. The annual financial report summarizing the Licensee's charitable raffle operations for the year 2005 was filed 4 months and 9 days after the due date thereof.

18. Consistent with W. Va. Code § 47-21-22, the State Tax Commissioner assessed a money penalty for the failure to timely file this quarterly financial report in the amount of \$ per month of fraction thereof, totaling the maximum amount of \$.

19. The total money penalty assessed by the State Tax Commissioner for the Licensee's failure to file the required financial reports was \$.

20. The State Tax Commissioner further ordered that both the Licensee's charitable bingo license and its charitable raffle license be suspended effective at noon on the 21<sup>st</sup> day of June, 2006, and be reinstated effective noon on the 5<sup>th</sup> day of July, 2006.

21. By letter dated June 28, 2006, the Director of the "Criminal Investigation Division" advised the Licensee that the State Tax Commissioner was staying the order of suspension pending a hearing of the Licensee's appeal of the State Tax Commissioner's order and issuance of this decision. *See* State's Exhibit No. 8.

22. In the letter staying enforcement of the State Tax Commissioner's order, the State Tax Commissioner noted that the Licensee had "voluntarily" suspended all charitable gaming activities for two days prior to being notified of the stay of the Commissioner's order.

23. The Licensee's representative and witness testified that he is the Bingo Committee Chairman for the Licensee.

24. He testified that the Licensee complied with the State Tax Commissioner's order and suspended all charitable bingo operations commencing at noon on the 21<sup>st</sup> day of June, 2006, and did not resume charitable bingo until after noon on the 5<sup>th</sup> day of July, 2006, in spite of the fact that the State Tax Commissioner stayed enforcement of the order pending resolution of the Licensee's appeal.

25. He was unable to testify that the Licensee complied with the State Tax Commissioner's order and suspended charitable raffle operations in compliance with the State Tax Commissioner's order.

26. He testified that the Licensee does not challenge the amount of the penalty or the fact that it owed the money penalty, and that it paid the full amount of the \$ money penalty.

27. He testified that the Licensee does not contest the suspension of its charitable bingo license, but testified that he believes the Licensee should receive credit against the suspension for the two days for which the State Tax Commissioner admits that the Licensee "voluntarily" served the ordered suspension, and for the additional twelve days for the Licensee suspended its charitable bingo operations, even though the State Tax Commissioner stayed the suspension pending resolution of this appeal. *See State's Exhibit No. 8.*

28. He testified that the Licensee does not contest the suspension of its charitable raffle license, but testified that he believes the Licensee should receive credit against the suspension for the two days for which the State Tax Commissioner admits that the Licensee "voluntarily" served the ordered suspension. *See State's Exhibit No. 8.*

29. The State Tax Commissioner offered no testimony or other evidence to dispute that the Licensee voluntarily suspended charitable bingo operations from June 21, 2006, through July 5, 2006, even though the Commissioner stayed enforcement of his order.

## **DISCUSSION**

The Licensee admits that it failed to file its quarterly financial reports summarizing its charitable bingo operations for the third and fourth quarters of 2005, its annual financial report summarizing its charitable bingo operations for the year 2005, and its annual financial report summarizing its charitable raffle operations for the for the year 2005. The failure to file these financial reports constitutes four separate violations of the laws licensing charitable bingo and charitable raffle operations in West Virginia. Specifically, the Licensee's failure to file its quarterly financial report summarizing charitable bingo operations for the third and fourth quarters of 2005 constitute two separate violations of W. Va. Code § 47-20-24 [1996]. Its failure to file its annual financial report summarizing charitable bingo operations for 2005 is one violation of W. Va. Code § 47-20-24 [1996]. Its failure to file its annual financial report summarizing charitable raffle operations for 2005 is a violation of W. Va. Code § 47-21-22 [1996]. The Licensee does not contest that it committed these four violations.

With respect to annual and quarterly financial reports summarizing charitable bingo operations, W. Va. Code § 47-20-24 provides, "[A]ny licensee failing to file the report when due is liable for a penalty of \$ for each month or fraction of a month during which the failure continues, the penalty not to exceed \$: . . . ." With respect to annual financial reports summarizing charitable raffle operations, W. Va. Code § 47-21-22 provides, "[A]ny licensee failing to file the report when due is liable for a penalty of \$ for each month or fraction of a month during which the failure continues, the penalty not to exceed \$: . . . ." Since the Licensee failed to file each of the required financial reports for a period exceeding four months, the Tax Commissioner assessed a penalty in the amount of \$ for each of the four violations, for a total of \$.

With respect to the penalties assessed by the State Tax Commissioner, the burden of proof is on the licensee to show that it is not subject to the penalties or that the State Tax Commissioner was without authority to assess the penalty. See W. Va. Code §§ 47-20-24 [1996]; 47-20-31(a)(6) & (b)(4) [1999]; 47-21-22 [1996]; and 47-21-30(a)(6) & (b)(4) [1999]. The Licensee has not done so. To the contrary, the penalties were not contested by the Licensee, and it has paid the penalty.

In addition to the money penalty, the Tax Commissioner suspended each of the Licensee's charitable bingo and charitable raffle licenses for a period of two weeks, commencing at noon on June 21, 2006, and ending at noon on July 5, 2006. The Licensee's charitable bingo license was suspended pursuant to W. Va. Code § 47-20-23(d) and (e) [1981], which provide:

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that said failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article[;]

and/or W. Va. Code § 47-20-31 [1999], which provides, in relevant part:

(a) *Additional remedies.* – Notwithstanding any provision of this article to the contrary, the commissioner may:

\* \* \* \*

(2) Suspend the license of any licensee for the period of time the commissioner deems appropriate, not to be less than one week nor more than twelve months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated for this article.<sup>2</sup>

In compliance with W. Va. Code § 47-20-23(e) [1981], the Tax Commissioner promulgated legislative rules respecting administration of charitable bingo. With respect to the suspension of

charitable bingo licenses, the State Tax Commissioner promulgated W. Va. Code St. R. § 110-16-31 (May 1, 2001), which provides, in relevant part:

31.1. For any material violation of the Bingo act or this rule, the Tax Commissioner may:

\* \* \* \*

31.1.2. Suspend the charitable bingo license of any licensee for the period of time the Tax commissioner considers appropriate. A suspension may not be for less than one week nor more than twelve months for each material violation; .  
...

The action of the Commissioner in suspending the Licensee's charitable bingo license is within the authority granted him by the Legislature. The Legislature authorized the Commissioner to suspend the charitable bingo licenses of licensees who fail to maintain records or file reports. In the 1981 statute, the Legislature did not specify the length of any suspension. Instead, it delegated to the Commissioner the authority to specify the length of suspensions by promulgation of legislative rule, subject to its approval. Subsequently, in the 1999 statute, the Legislature authorized the State Tax commissioner to suspend a charitable bingo license for a period not less than one week and not more than twelve months. Subsequent to the passage of the 1999 statute, the Tax Commissioner promulgated a legislative rule which, as set forth above, provides for a suspension of not less than one week and not more than twelve months. This rule, which is consistent with the latter statute, was approved by the Legislature.

The burden of proof is on the Licensee to show that it was not subject to suspension of its charitable bingo license, that the suspension was not warranted or was excessive, or that the State Tax Commissioner did not have authority to suspend the license. *See* W. Va. Code §§ 47-20-23(d) & (g) [1981]; 47-20-24 [1996]; and 47-20-31(a)(2) & (b)(4) [1999]. The Licensee has not

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<sup>2</sup> The State Tax Commissioner's Order does not specify whether the Commissioner is relying on § 47-20-23, § 47-20-31, or both.



satisfied this burden of proof. In fact, it has admitted that it committed the acts upon which the suspension of its charitable bingo license is based.

The suspension of the Licensee's charitable bingo license for two weeks is at the lower end of the scale of suspensions. This is commensurate with the nature of the offense committed by the Licensee in this matter and the fact that it is the Licensee's first offense of this nature.

The evidence shows that the Licensee has served the full two-week suspension of its charitable bingo license. The Tax Commissioner clearly recognizes that the Licensee served two days of the suspension prior to the Commissioner's voluntary stay of his order. The undisputed testimony is that it "voluntarily"<sup>3</sup> served the remainder of the two-week suspension. Thus, the suspension of charitable bingo license has been served and the Licensee's charitable bingo license is not subject to any further suspension.

The Licensee's charitable raffle license was suspended pursuant to W. Va. Code § 47-21-21(d) and (e) [1984], which provide:

(d) The commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain the records or file the reports required by this article if the commissioner finds that such failure will substantially impair the commissioner's ability to administer the provisions of this article with regard to said licensee.

(e) The commissioner shall promulgate reasonable rules and regulations necessary to the administration of this article[;]

and/or W. Va. Code § 47-21-30 [1999], which provides in relevant part:

(a) *Additional remedies.* – Notwithstanding any provision of this article to the contrary, the commissioner may:

\* \* \* \*

(2) Suspend the license of any licensee for the period of time the commissioner deems appropriate, not to be less than one week nor more than

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<sup>3</sup> Serving the remainder of the two-week suspension was "voluntary" only in the sense that it chose to serve the suspension at that time, rather than await the outcome of its appeal.

twelve months, for any material violation of the provisions of this article or legislative rule of the commissioner promulgated for this article.<sup>4</sup>

In compliance with W. Va. Code § 47-21-21(e), the Tax Commissioner promulgated legislative rules respecting administration of charitable raffles. Regarding the suspension of charitable raffle licenses, the State Tax Commissioner promulgated W. Va. Code St. R. § 110-37-29 (May 1, 2001), which provides, in relevant part:

29.1. For any material violation of W. Va. Code § 47-21-1 et seq. or this rule, the Tax Commissioner may:

\* \* \* \*

29.1.2. Suspend the charitable raffle license of any licensee for the period of time the Tax commissioner considers appropriate. A suspension may not be for less than one week nor more than twelve months for each material violation; .  
...

As with the Licensee's charitable bingo license, the action of the Commissioner in suspending the Licensee's charitable raffle license is within the authority granted him by the Legislature. The Legislature authorized the Commissioner to suspend the charitable raffle licenses of licensees who fail to maintain records or file reports. In the 1984 statute, the Legislature did not specify the length of any suspension. Instead, it delegated to the Commissioner the authority to specify the length of suspensions by promulgation of legislative rule, subject to its approval. Subsequently, in the 1999 statute, the Legislature authorized the State Tax commissioner to suspend a charitable raffle license for a period of not less than one week and not more than twelve months. Subsequent to passage of the 1999 statute, the Tax Commissioner promulgated a legislative rule which, as set forth above, provides for a suspension

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<sup>4</sup> The State Tax Commissioner's Order does not specify whether the Commissioner is relying on § 47-21-22, § 47-21-30, or both.

of not less than one week and not more than twelve months. This rule, which is consistent with the latter statute, was approved by the Legislature.

The burden of proof is on the Licensee to show that it was not subject to suspension of its charitable raffle license, that the suspension was not warranted or was excessive, or that the State Tax Commissioner did not have authority to suspend the license. *See* W. Va. Code §§ 47-21-21(d) & (g) [1984]; 47-21-22 [1996]; and 47-21-30(a)(2) & (b)(4) [1999]. The Licensee has not satisfied this burden of proof. In fact, as it did with respect to its charitable bingo license, it has admitted that it committed the acts upon which the suspension of its charitable raffle license is based.

The suspension of the Licensee's charitable raffle license for two weeks is also at the lower end of the scale of suspensions. This is commensurate with the nature of the offense committed by the Licensee in this matter and the fact that it is the Licensee's first offense of this nature.

The Licensee has served two days of the two-week suspension of its charitable raffle license ordered by the State Tax Commissioner. *See* State's Exhibit No. 8. There is no evidence to show that the Licensee served any portion of the suspension beyond the two days which the Tax Commissioner admits that it served. The Licensee's representative and sole witness candidly admits that he cannot state that Licensee served any portion of the suspension beyond the two days. Thus, without any evidence to show that the Licensee served any more than two days of the suspension of its charitable raffle license, the Licensee will have to serve the additional twelve days which it has apparently not served.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on the assessment of a money penalty for the late filing of financial reports summarizing a Licensee's charitable bingo operations or charitable raffle operations, the burden of proof is upon the Licensee to show that it timely filed such reports so as to not be subject to such penalty or to show that the State Tax Commissioner was without authority to assess such penalty. *See* W. Va. Code §§ 47-20-24(g) [1996]; 47-20-31(b)(4) [1999]; 47-21-22 [1996]; and 47-21-30(a)(6) & (b)(4) [1999].

2. In this matter, the Licensee has admitted that it failed to timely file its financial reports summarizing a Licensee's charitable bingo operations or charitable raffle operations.

3. In a hearing before the West Virginia Office of Tax Appeals on the suspension of a charitable bingo license or a charitable raffle license, the burden of proof is upon the Licensee to show that it did not commit the offense that resulted in the issuance of an order suspending the licenses by the State Tax Commissioner or that the State Tax Commissioner was without any authority to issue such order. *See* W. Va. Code §§ 47-20-23(d) & (g) [1981]; 47-20-24 [1996]; 47-20-31(a)(2) & (b)(4) [1999]; 47-21-21(d) & (g) [1984]; 47-21-22 [1996]; and 47-21-30(a)(2) & (b)(4) [1999].

4. The Licensee in this matter has failed to carry its burden of showing that its charitable bingo license and charitable raffle license were not properly suspended for two weeks by the State Tax Commissioner.

5. The Licensee in this matter has presented evidence sufficient to demonstrate that it has served the full two-week suspension of its charitable bingo license.

6. The Licensee in this matter has failed to present evidence sufficient to demonstrate that it has served any more than two days of the full two-week suspension of its charitable raffle license.

7. The Licensee is required to serve the remaining twelve days of the two-week suspension of its charitable raffle license.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that by reason of the Licensee's three separate violations of W. Va. Code § 47-20-24 [1996], and its single violation of W. Va. Code § 47-21-22 [1996], the money penalty in the amount of \$, and the two-week suspensions of each of the Licensee's charitable bingo and charitable raffle licenses are hereby **AFFIRMED**. With respect to the Licensee's charitable bingo license, the Licensee is entitled to credit for the period that it has already served the suspension; thus, no further suspension of the Licensee's charitable bingo license is warranted. With respect to the Licensee's charitable raffle license, the Licensee is entitled to credit for the two days that it has already served the suspension; thus, the Licensee's charitable raffle license will be suspended for an additional twelve days, commencing with and ending at a date and time to be determined by the State Tax Commissioner, upon proper notice to the Licensee or by agreement of the parties.